

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5291 of 1996

to

FIRST APPEAL No 5300 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and

MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

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2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

GOVINDBHAI KANJIBHAI

Versus

2ND SPECIAL LAND ACQUISITION OFFICER

Appearance:

MR NITIN M AMIN for Petitioners

MR HL JANI, AGP for the respondents

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 06/03/99

ORAL JUDGEMENT

(Per : Panchal, J.)

Admitted. Mr. H.L.Jani, learned A.G.P. waives service of notice on behalf of the respondents. At the joint request of learned advocates appearing for the parties, all the above-numbered appeals are taken-up for final hearing today.

2. By means of filing these appeals under section 54 of the Land Acquisition Act, 1894 read with section 96 of the Code of Civil Procedure, 1908, the appellants have challenged common judgment and award dated March 8, 1995 rendered by the learned 2nd Joint District Judge, Ahmedabad (Rural), Mirzapur, in Land Acquisition Reference Cases No. 819/88 to 828/88 and are claiming enhanced compensation. We may state that all the above-referred to references were consolidated with Land Acquisition Reference Case No. 825/88, which was treated as main case in which parties had led common evidence. Lands in dispute of village Khambhada, Taluka : Dhandhuka, District : Ahmedabad were placed under acquisition pursuant to publication of preliminary notification on September 6, 1983 issued under section 4(1) of the Land Acquisition Act, 1894. As common questions of fact and law are involved in these appeals, we propose to dispose of them by this common judgment.

3. The State Government had received a proposal to acquire agricultural lands of village Khambhada for Khambhada Irrigation Scheme. On scrutiny of the said proposal, State Government was satisfied that the agricultural lands of village Khambhada were likely to be needed for the said public purpose. Therefore, notification under section 4(1) of the Land Acquisition Act, 1894 ("the Act" for short) was issued, which was published in Official Gazette on September 6, 1983. The owners whose lands were proposed to acquire were served with notices and they had filed their objections against the proposed acquisition. After considering their objections, Special Land Acquisition Officer, Ahmedabad had submitted his report to the State Government as contemplated by section 5A(2) of the Act. On consideration of the said report, State Government was satisfied that agricultural lands of village Khambhada which were specified in the notification published under section 4(1) of the Act were needed for public purpose of Khambhada Irrigation Scheme. Therefore, declaration under section 6 of the Act was made which was published in Official Gazette on October 16, 1986. Interested persons were thereafter served with notices under section 9 of the Act for determination of compensation. Having

regard to the materials placed before him, Special Land Acquisition Officer, Ahmedabad by his award dated May 3, 1988 offered compensation to the claimants at the rate of Rs. 1.20 ps. per sq.mt. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, they made applications in writing to the Special Land Acquisition Officer requiring him to refer the matters to the Court for the purpose of determination of compensation. Accordingly, references were made to the District Court, Ahmedabad (Rural) at Mirzapur, which were numbered as Land Acquisition Reference Cases No.819/88 to 828/88. In the reference applications it was claimed by the claimants that having regard to the fertility of the lands acquired as well as income which the claimants were deriving from the sale of agricultural produces, they were entitled to compensation at the rate of Rs. 25/- per sq.mt. According to the claimants, lands acquired were irrigated lands and as the claimants were taking 2 to 3 crops in a year, they were entitled to enhanced compensation. Though on behalf of the opponents, learned District Government Pleader had appeared, no written statement was filed controverting the averments made in the reference applications. In view of the averments made in the reference applications, necessary issues for determination were raised by the reference court. In order to substantiate the claim advanced in the reference applications, witness Govindbhai Kanjibhai was examined by the claimants at Exh.23. The witness stated in his deposition that the lands situated just adjacent to acquired lands were also put under acquisition by the Government for the same purpose pursuant to publication of notification on September 6, 1983 issued under section 4(1) of the Act and the reference Court in Land Acquisition Reference Cases No. 829/88 to 852/88 had awarded additional compensation to the claimants at the rate of Rs. 9/- per sq.mt. and, therefore, the claimants were at least entitled to additional compensation at the rate of Rs. 9/- per sq.mt. The witness produced certified copy of the previous award of the reference Court rendered in Land Acquisition Reference Cases No. 829/88 to 852/88 at Exh.21. The witness further asserted before the Court that neighbouring lands which were acquired were equally fertile as the lands acquired in the present case and the claimants were taking 2 to 3 crops in a year and were earning substantial income from the sale of agricultural produces. On behalf of the respondents, no evidence was produced to indicate that the offer of compensation made by the Special Land Acquisition Officer was either adequate or just. On appreciation of evidence, the Court

held that previous award of the reference Court rendered in Land Acquisition Reference Cases No. 829/88 to 852/88 was comparable as well as relevant for the purpose of ascertaining market value of the acquired lands. Placing reliance on the previous award of the reference court which was produced at Exh.21, the reference Court held that the claimants are entitled to additional compensation at the rate of Rs.9/- per sq.mt. by impugned common award dated March 8, 1995, giving rise to present appeals.

4. Mr. Nitin M. Amin, learned Counsel for the appellants submitted that as the High Court had enhanced compensation by Rs. 1/- per sq.mt., present appellants are also entitled to additional compensation at the rate of Rs. 1/- per sq.mt., as in both the cases, lands were acquired by publication of notification of the same date and for the same purpose.

5. Mr. H.L. Jani, learned Counsel for the respondents pleaded that having regard to the facts of the case, a just award has been passed by the reference Court and, therefore, the appeals should not be entertained.

6. We have heard the learned Counsel for the parties. We have also been taken into consideration the relevant documents produced before us by the learned Counsel for the appellants for our perusal. It is not in dispute that lands of village Khambhada were placed under acquisition for Khambhada Irrigation Scheme pursuant to publication of preliminary notification issued under section 4(1) of the Act on September 6, 1983 and in Land Acquisition Reference Cases No. 829/88 to 852/88, reference court had awarded additional compensation to the claimants at the rate of Rs. 9/- per sq.mt. It is also not in dispute that in First Appeals No. 1796/85 to 1819/95 decided on July 12, 1996, the Division Bench of this Court had awarded additional compensation of Rs.1/per sq.mt. to the claimants. In both the cases, lands were acquired for the same public purpose i.e. Khambhada Irrigation Scheme and notifications issued under section 4(1) of the Act were also published on the same day i.e. September 6, 1983. The evidence of witness Govindbhai Kanjibhai recorded at Exh.23 establishes that the lands acquired in the present case were similar to the lands in respect of which reference court had awarded additional compensation at the rate of Rs. 9/- per sq.mt. Under the circumstances, we are of the opinion that the judgment of the High Court rendered in First Appeals No. 1796/95 to 1819/95 would squarely

apply to the facts of the present case and the present appellants would also be entitled to additional compensation of Rs. 1/- per sq.mt. Therefore, the appeals will have to be partly allowed.

For the foregoing reasons, all the appeals are partly allowed. It is held that the claimants appellants in all these appeals would be entitled to additional compensation of Rs. 1/- per sq.mt. i.e. in all total compensation at the rate of Rs. 11.20 ps. per sq.mt. The claimants would be entitled to additional compensation as contemplated by section 23(1-A) of the Act as well as solatium and interest in accordance with the provisions of the Land Acquisition Act, 1894. There shall be no order as to costs. Office is directed to draw decree in terms of this judgment.